

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

APR 13 2007

COURT OF APPEALS
DIVISION TWO

MARGARET G.,

Appellant,

v.

ARIZONA DEPARTMENT OF
ECONOMIC SECURITY,
SIERRA G., and CHRISTIAN G.,

Appellees.

2 CA-JV 2006-0055
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 15975900

Honorable Elizabeth Peasley-Fimbres, Judge Pro Tempore

AFFIRMED

Jacqueline Rohr

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

B R A M M E R, Judge.

¶1 Appellant Margaret G. is the mother of an adult daughter, Celeste, and two minor children, Sierra G., born April 24, 1991, and Christian G., born December 25, 1992.

Margaret appeals from the juvenile court's order of September 29, 2006, adjudicating Sierra and Christian dependent after a contested hearing. The dependency adjudication rested on the juvenile court's finding "that the allegations of the petition are true and that both Sierra and Christian have been subjected to emotional and physical abuse at the hands of their mother." Finding reasonable evidence in the record supporting the juvenile court's ruling, we affirm.

¶2 As defined in A.R.S. § 8-201(13), a dependent child includes one:

(i) In need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.

(ii) Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care.

(iii) A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.

Because "[t]he primary consideration in a dependency case is always the best interest of the child[,] . . . the juvenile court is vested with 'a great deal of discretion.'" *Ariz. Dep't of Econ. Sec. v. Superior Court*, 178 Ariz. 236, 239, 871 P.2d 1172, 1175 (App. 1994), quoting *In re Cochise County Juvenile Action No. 5666-J*, 133 Ariz. 157, 160, 650 P.2d 459, 462 (1982) (citation omitted).

¶3 Pursuant to A.R.S. § 8-841(B)(3), a dependency petition must include "[a] concise statement of the facts to support the conclusion that the child is dependent." The petition in this case alleged the following:

1. The mother has physically and emotionally abused the children by hitting them with her fists in the stomach and face, throwing things at them and calling them derogatory names.

2. Both children state they are afraid to go home due to the mother's unpredictable moods and physical abuse. Both children have refused visits or any further contact with the mother.

3. Both children exhibit signs of emotional abuse. The olde[r] child, Sierra, is depressed and angry. The younge[r] child, Christian, is depressed and fearful.

¶4 Margaret's sole contention on appeal is that the court's dependency finding was not supported by competent evidence that she had abused the children. The petitioner's burden of proof in a dependency proceeding is by a preponderance of the evidence. A.R.S. § 8-844(C)(1); Ariz. R. P. Juv. Ct. 55(C), 17B A.R.S.; *Cochise County No. 5666-J*, 133 Ariz. at 159, 650 P.2d at 461. We view the evidence and the reasonable inferences permitted by the evidence in the light most favorable to sustaining the juvenile court's findings, and we will affirm a dependency adjudication unless there is no evidence to support it. *In re Maricopa County Juvenile Action No. J-75482*, 111 Ariz. 588, 591, 536 P.2d 197, 200 (1975); *In re Pima County Juvenile Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994).

¶5 There is abundant evidence in the record supporting the juvenile court's conclusion that Sierra and Christian were dependent children "whose home [was] unfit by reason of abuse." § 8-201(13)(a)(iii). Viewed in the light most favorable to sustaining the juvenile court's findings, *In re Maricopa County Juvenile Action No. JS-8490*, 179 Ariz.

102, 106, 876 P.2d 1137, 1141 (1994), the evidence established that, after having run away from home and been missing for several weeks, Sierra was located in juvenile detention in Pima County on June 23, 2006. Sierra told a Child Protective Services (CPS) investigator that she was afraid to go home and did not want to see or talk to her mother. The investigator testified:

[Sierra] indicated that she . . . had had items thrown at her, her mother hit her, called her names. She had an extraordinarily long story to tell. Additionally, she said that she had told some of this in January of [20]06, when her mother hit her in the face and caused a swollen lip, and she said the police came and took pictures, but that nothing happened. And here she was again in June, and she absolutely did not think anyone would believe her. And she was quite sad, quite sad.

. . . .

When she would be able to get away from her mother, her mother would throw things [like rocks, cups, glasses, and remote controls] at her.

Sierra also reported that Margaret had “called her names, like whore, slut, prostitute, piece of shit, garbage and . . . criticized everything she did.”

¶6 The investigator attempted to speak by telephone with Margaret, who became “very angry,” hung up on the investigator, and later hung up on the investigator’s supervisor as well. Concerned for Christian’s welfare based on Sierra’s report and Margaret’s noncooperation, the investigator arranged for CPS to take both Sierra and Christian into protective custody on June 24. When subsequently interviewed, Christian told the same investigator that he, too, had been abused by Margaret. The investigator testified:

Christian was shy at the time, and he indicated that he was also a victim of physical abuse. That he had been hit with brooms, with a stick, had had fists put in his stomach from his mom. He said that his mother had actually pulled him by his jaw . . . put her finger inside his mouth, under his tongue, and pulled him along that way.

Like Sierra, Christian told the investigator he, too, was afraid of his mother. And he told an evaluating psychologist, Dee Winsky, that Margaret had similarly called him an assortment of cruel and disparaging names.

¶7 At the request of CPS, Winsky examined both children in July 2006 to determine if the criteria for emotional abuse were present. Winsky concluded that both children had been physically and emotionally abused, that Christian suffered as a result from severe anxiety and moderate depression, and that Sierra exhibited significant resulting anxiety and mild depression. Winsky's testimony supported the juvenile court's finding of abuse, which is defined in § 8-201(2) to include the infliction of "serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and . . . [as] diagnosed by a medical doctor or psychologist."

¶8 Reduced to their essence, Margaret's arguments challenge not the existence but only the weight of the evidence that she had abused her children. She claims that, "[a]t best all that could be established was that the children [had] made questionable reports of abusive behavior," and offers alternative explanations for some of the clinical findings made by Winsky. Even so, Margaret concedes that Sierra may well be "a dependent child, . . . due to her own incorrigibility," but maintains that Christian, who in September 2006 ran away

from the group home where he had been placed and returned to his mother's home, is not dependent because he was not abused.¹

¶9 Assessing the credibility of witnesses and resolving conflicts in the evidence are exclusively the province of the juvenile court. *See In re Maricopa County Juvenile Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996) (juvenile court in best position to judge witness credibility, hence we do not reweigh evidence). Because there was more than reasonable evidence to support the juvenile court's factual findings and legal conclusions, we will not disturb them. *Id.*

¶10 For all the foregoing reasons, we affirm the dependency adjudication.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

PHILIP G. ESPINOSA, Judge

¹In a written report admitted in evidence at the September 2006 adjudication hearing, Christian's therapist wrote in August 2006 that "Christian states over and over that he wants to go home to his mother and at the same time relays stories of his home life with his mother that demonstrate verbal and emotional abuse he has suffered. This scenario is not uncommon in abusive and dysfunctional families."